

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
3 (Primary Sponsor)

4 BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

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6 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO  
7 USE AN ALTERNATIVE PROCEDURE FOR THE DESIGN AND CONSTRUCTION OF CERTAIN CAPITAL  
8 PROJECTS; PROVIDING DEFINITIONS; PROVIDING FOR THE APPLICATION OF OTHER PUBLIC  
9 CONTRACTING STATUTES AND RULES; LIMITING THOSE CAPITAL PROJECTS FOR WHICH THE  
10 ALTERNATIVE CONTRACTING PROCEDURE MAY BE USED; PROVIDING FOR PROJECT MANAGEMENT  
11 AND INCENTIVE PAYMENTS; SPECIFYING A DATE BY WHICH CERTAIN CONTRACTS MUST BE  
12 AWARDED; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

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14 WHEREAS, the Legislature finds that the traditional process of awarding capital project  
15 construction contracts in lump sum to the lowest responsible bidder is a fair and objective method of  
16 selecting a contractor; and

17 WHEREAS, under certain circumstances, however, another capital project contracting procedure  
18 may best serve the public interest; and

19 WHEREAS, capital construction projects are being considered by the 57th Legislature to which an  
20 alternative method of awarding construction contracts could be applied.

21 THEREFORE, a capital projects alternative contracting procedure may be used for certain capital  
22 projects being considered by the 57th Legislature in order to determine the benefits of that procedure and  
23 whether that procedure should be applied to other capital project construction contracts.

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25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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27 NEW SECTION. **Section 1. Definitions.** Unless the context clearly requires otherwise, the  
28 following definitions apply to [sections 1 through 3]:

29 (1) "Capital project" or "project" means a capital construction project authorized by:

30 (a) [House Bill No. 5]; or

(b) [House Bill No. 14].

(2) "Capital projects alternative contracting procedure" means the design-build, design-negotiate-build, or general contractor/construction manager at-risk contracting procedure.

(3) "Department" means the department of administration.

(4) "Design-build" means a procedure by which the department, after a competitive selection process, selects a contractor and negotiates a maximum allowable cost for both the design and construction of a capital project.

(5) "Design-negotiate-build" means a procedure by which the department, after a competitive selection process, selects a contractor and negotiates a maximum allowable construction cost to be guaranteed by that contractor, who:

(a) provides services during the design phase of a capital project construction contract that may include life-cycle cost design, value engineering, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work; and

(b) acts as the general contractor during the construction phase of the contract.

(6) "General contractor/construction manager at-risk" means a procedure by which the department, after a competitive selection process, selects a contractor and negotiates a maximum allowable construction cost to be guaranteed by that contractor, who:

(a) provides services during the design phase of a capital project construction contract that may include life-cycle cost design, value engineering, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work;

(b) acts as the construction manager during the construction phase of the contract; and

(c) assumes the risk that costs during the design and construction phases of the contract may be greater than the amount paid by the department for satisfactory completion of all phases of the contract.

**NEW SECTION. Section 2. Authorization for capital projects alternative contracting procedure -- application of other law.** (1) A capital projects alternative contracting procedure may be used for construction of a capital project only if the department determines that the use of the procedure will serve the public interest.

(2) If the department uses a capital projects alternative contracting procedure, the department shall comply with 18-2-114, 18-2-122, and Title 18, chapter 2, parts 2 and 4. Notwithstanding any other

1 provision of law, other statutes and rules governing contracting for the construction of a capital project  
2 that may apply to the construction of a project for which capital projects alternative contract procedure  
3 will be used apply to that project only insofar as those other statutes and rules do not conflict with  
4 [sections 1 through 3].

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6 **NEW SECTION. Section 3. Project management and contracting -- design documents -- incentive**  
7 **payments -- date for contract award.** (1) The department shall provide for appropriate and coordinated  
8 design documents for the construction of a capital project for which a capital projects alternative  
9 contracting procedure is to be used by the department.

10 (2) As part of a capital projects alternative contracting procedure, the department may provide  
11 one or more incentive payments to a contractor, if the necessity for and amount of that payment or those  
12 payments are identified by the department as part of the competitive selection process, for one or more  
13 of the following purposes:

- 14 (a) early completion of the construction of a capital project;  
15 (b) cost saving; or  
16 (c) achievement of other goals established by the department.

17 (3) A contract for which the department uses a capital projects alternative contracting procedure  
18 must be entered into before July 1, 2003.

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20 **NEW SECTION. Section 4. Coordination instructions.** (1) If neither House Bill No. 5 nor House  
21 Bill No. 14 is passed and approved, then [this act] is void.

22 (2) If House Bill No. 5 is not passed and approved, then [section 1(1)(a)] is void.

23 (3) If House Bill No. 14 is not passed and approved, then [section 1(1)(b)] is void.

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25 **NEW SECTION. Section 5. Saving clause.** [This act] does not affect rights and duties that  
26 matured, penalties that were incurred, or proceedings that were begun before July 1, 2003.

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28 **NEW SECTION. Section 6. Effective date.** [This act] is effective July 1, 2001.

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30 **NEW SECTION. Section 7. Termination.** [This act] terminates July 1, 2003.

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